THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.5678 of 2001

Between:

M/s. Sree Sai Rice Mills rep.by
Its Partner K.Narsa Goud.

..Petitioner

and

1. The A.P. State Financial Corporation
   rep. by its Managing Director, Hyderabad
   and another.

..Respondents.

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Oral Order:

Petitioner applied for the term loan for the purpose of starting rice mill and the respondent—Corporation sanctioned a sum of Rs.5,61,000/-. According to the petitioner, out of the sanctioned amount the Corporation released only Rs.2,80,050/-. At the time of releasing the loan amount the respondent authorities insisted the petitioner to pay the loan amount in equal instalments at Rs.56,100/-. Though the authorities released only 2,80,050/- as against Rs.5,61,000/- demanding equal instalment of Rs.56,100/- is arbitrary and illegal instead they have to repay only Rs.28,200/- on the amounts sanctioned and they are regularly repaying the instalments at Rs.28,200/-. When they are regularly approaching the respondent authorities for one time settlement for the amount due, the same has not been scheduled and they have paid a sum of Rs.4,61,107/-, which will satisfy the entire sum. While so, the respondents through their letters dated 01-12-1998 and 08-03-1999 directed the petitioner to pay an amount of Rs.40,901/- for processing the proposal for one time settlement. Accordingly, the petitioner paid the said amount on 19-03-1999, but the same has not been settled. Therefore, the respondent authorities estopped from claiming Rs.4,65,143/- towards outstanding amount through their letter dated 10-11-2000. Therefore, a Mandamus may be issued to declare the action of the respondents in demanding Rs.3,21,143/-

towards one time settlement as arbitrary, illegal and contrary to the notice of the respondents dated 01-12-1998; and direct the respondent authorities to settle the loan account of the petitioner for one time settlement as on 01-12-1998 at Rs.28,200/- instalment.

Opposing the writ petition the respondent-Corporation filed a counter stating that from out of sanctioned sum of Rs.5,61,000/- the petitioner had availed the same and the petitioner is due and payable in a sum of Rs.5,03,033/- as on 31-03-2001. The petitioner unit is being run at profitable line and assets of the unit is more than Rs.7 lakhs. Therefore, Corporation need not consider the request of one time settlement and accordingly the proposal made by the petitioner was declined and the same was communicated to the petitioner. The petitioner filed W.P.No.9290 of 1998 before this Court seeking a direction for settling the account on OTS basis and other concessions. As per the directions issued in the said writ petition, to explore the possibility of settling the loan repayable by the petitioner on OTS basis, the respondent—Corporation duly considered the request of the petitioner ignoring the value of the assets apart from considering waiver of interest arrears in a sum of Rs.1,81,890/- and called upon the petitioner to pay a sum of Rs.3,21,143/- through letter dated 24-01-2001, but the petitioner failed make any payment in addition to Rs.41,000/- made during the year 1999 for process its application for one time settlement. In spite of sanctioning concession of Rs.1,89,000/- petitioner again filed the present writ petition which is not maintainable and the same is liable to be dismissed.

Nowhere in the affidavit the petitioner stated about its earlier filing writ petition except filing the order copy as material paper to the writ petition.

Once the earlier writ petition is disposed of directing the respondent—Corporation to explore the possibility of one time settlement and the Corporation acted fabvourably and agreed to waive interest at Rs.1,81,890/- and called upon the petitioner to pay a sum of Rs.3,21,143/- through their letter dated 24-01-2001, again filing the writ petition to reduce the amount to Rs.28,200/- instalment does not arise.

A Division Bench of this Court in ***UNION BANK OF INDIA v. SRI VENKATESWAR RICE AND FLOUR MILL (A.P.)***[1] categorically held that no Mandamus can be issued directing the bank to evolve a scheme for repayment to help the sick unit in the light of the guidelines issued by the Reserve Bank of India which has no statutory force.

In ***INDUSTRIAL FINANCE CORPN. OF INDIA LTD. v. SREE KRISHNA OIL COMPLEX LTD***.[2] a division Bench of this court categorically held that when serious factual controversies between the parties, namely, according to the respondent-company, the financial institutions and the banks have committed defaults in the mater of disbursement of the agreed loan amounts in time, whereas according to the financial institutions and the banks, the company's unit has become sick due to its own follies, such as mismanagement, bad planning, breaches of terms and conditions of loans and the failure of the promoters to bring in committed and agreed amounts etc. cannot be decided on the mere pleadings without investigation on the relevant aspect in dispute. It was further held that one of the grounds against the exercise of discretionary power vested under Article 226 of the Constitution is where disputed facts have to be investigated. The reason is that when such dispute exists between the parties, the right

claimed by the petitioner is not capable of being established in the summary proceedings under Article 226 of the Constitution, because, it requires a detailed examination of the evidence as may be had in a suit. In such a case High Court normally cannot exercise discretionary power under Article 226 particularly waiver of interest and fix up the instalments for the loan availed etc. as claimed by the petitioner.

It is well settled that unless one time settlement is statutory claim it cannot be enforced by issuing Mandamus. Once the respondent—Corporation showed some indulgence in obedience to the Mandamus issued by this court earlier and waived interest at Rs.1,89,000/-and called upon the petitioner to pay the balance amount, it is for the petitioner to act accordingly but successive writ petition cannot be filed questioning the same.

The writ petition is devoid of merits and it is accordingly dismissed. No costs.

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A.GOPAL
REDDY, J.

25-07-2007
Murthy

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[1] (1991) 72 CC 402 (AP)
[2] 2002 (3) ALD 781 (DB)